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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** University Research Company, LLC

**File:** B-294358; B-294358.2; B-294358.3; B-294358.4; B-294358.5

**Date:** October 28, 2004

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Devon E. Hewitt, Esq., John E. Jensen, Esq., Daniel S. Herzfeld, Esq., and Orest J. Jowyk, Esq., Shaw Pittman, for IQ Solutions, Inc., an intervenor.

Mogy E. Omatete, Esq., and Douglas Kornreich, Esq., Department of Health and Human Services, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the adequacy of a source selection decision is sustained where the selection official ultimately conceded that she knowingly mischaracterized in the source selection document the award recommendation of agency project officers, whose participation in the evaluation of proposals is anticipated by the agency's acquisition regulation--i.e., she wrote that the project officers recommended award to the awardee, when, in fact, they recommended award to the protester--and, as a result, she fails to state any basis for rejecting their award recommendation. Without documentation in the record explaining the basis for rejecting the input of the project officers, the Government Accountability Office has no basis for determining whether those actions were reasonable.

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### DECISION

University Research Company, LLC (URC) protests the award of a contract to IQ Solutions, Inc., by the Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS), pursuant to request for proposals (RFP) No. 277-04-6091, issued for the operation of the SAMHSA Health Information Network. URC challenges nearly every conclusion reached by the agency in its evaluation of proposals--including conclusions found in the technical evaluation, the cost realism review, and the assessment of past performance--and

argues that the agency failed to consider input from the agency's project officers most involved with the contractor in providing these services.

We sustain the protest.

## BACKGROUND

The purpose of this procurement is to realign SAMHSA's health information dissemination efforts into a single contract; previously, the services covered here were dispersed across multiple contracts. This solicitation includes the operation of the National Clearinghouse for Alcohol and Drug Information (NCADI), and the National Mental Health Information Clearinghouse (NMHIC). The NCADI provides a single point of entry to customer-oriented information services related to substance abuse, while also serving as the hub of the federal government's effort to gather and communicate information about effective prevention, intervention, and treatment policies, programs, and practices. Contracting Officer's (CO) Statement, at 1. The NMHIC provides a first point of contact, and a source of information and referrals, to users of mental health services and their families, service providers, policy makers, the media, and the general public. Id. In addition, this solicitation includes providing certain support services to the SAMHSA Office of the Administrator. Id.

The RFP was issued on December 19, 2003, was set aside for small businesses, and anticipated the award of a cost-plus-award-fee contract for a base period of 1 year followed by four 1-year options. RFP at 1, 56. Section M of the RFP provided the following guidance:

Selection of an offeror for contract award will be based on an evaluation of proposals against four factors. The factors are as follows: technical, past performance and cost. Although technical factors are of paramount consideration in the award of the contract, past performance and cost/price are also important to the overall contract award decision.

RFP at 70. In subsequent provisions, the RFP identified four evaluation criteria (totaling 100 points) and a fifth criterion, past performance (worth 36 points). RFP at 70-73. The four evaluation criteria and the weight assigned to each were: (1) understanding the project, 15 points; (2) technical approach, 35 points; (3) key personnel, 35 points; and (4) management plan and facilities, 15 points.<sup>1</sup>

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<sup>1</sup> The inconsistency in the RFP's explanation of the evaluation scheme was raised by one of the offerors in written questions to the agency. In an amendment to the RFP, the agency explained that the evaluation factors were: understanding the project;  
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The agency received six proposals by the February 6, 2004, closing date. Both the CO's Statement and agency report (AR) narrative explain that "[i]n accordance with HHS Acquisition Regulations and SAMHSA policy, an objective technical review committee was convened on March 4-5, 2004 to evaluate, from a technical standpoint, the proposals received in response to the RFP." CO's Statement at 2; AR at 3. At the conclusion of the review, the agency established a competitive range of three offerors: IQ Solutions, URC, and a third company.

Discussions with the offerors in the competitive range began on May 6, and final proposal revisions were required by June 4. Upon receipt of the final proposals, the technical review panel reconvened, on June 17, and a review of the cost changes was also undertaken. At the conclusion of these reviews, the results of the evaluation were as follows:

|                      | <b>IQ Solutions</b> | <b>URC</b>     | <b>Offeror A</b> |
|----------------------|---------------------|----------------|------------------|
| Technical            | 93.3 points         | 88.7 points    | 83.8 points      |
| Past Performance     | 31.2 points         | 29.8 points    | 28.9 points      |
| Total Score          | 124.5 points        | 118.5 points   | 112.7 points     |
| Total Evaluated Cost | \$57.1 million      | \$63.1 million | \$85.1 million   |

CO's Statement at 4.<sup>2</sup>

At the conclusion of the evaluation process, the CO explains that she conferred with the Center Directors, the Head of SAMHSA's Office of Communications, SAMHSA's

(...continued)

technical approach, key personnel, and management plan and facilities. RFP, amend. 1, question 85, at 15. For ease of reference, our decision will refer to technical, past performance and cost as the evaluation factors, and refer to the four components of the technical factor as subfactors.

<sup>2</sup> At this point in the procurement, the CO assigned to this matter left employment at HHS, and was replaced by SAMHSA's Head of the Contracting Activity (HCA). Since the HCA was acting as the CO, we will continue to refer to the CO. The Source Selection Determination document in the record here was executed by the HCA, and there is no dispute in the record that the description of the events recounted after the departure of the original CO, on June 25, are hers. Hearing Transcript (Tr.) at 52-53. In addition, the CO's Statement prepared in response to this protest is the statement of the HCA acting as CO. AR, Tab 2.

Deputy Administrator, its Executive Officer, the Special Assistants to the Administrator, the Project Officer, and the Alternate Project Officer about the award decision. She also states that one of the Special Assistants to the Administrator provided “the award recommendation . . . to award to IQ solutions.” Id. The CO advised that the recommendation “was based upon technical superiority and lower cost, as well as the appropriateness and reasonableness of costs proposed and overall best value to the Government.” Id.

After reflecting the final scores and evaluated costs, the Source Selection Determination document states:

We forwarded IQ Solutions, URC and [Offeror A’s] responses to the Project Officer and on June 29, 2004 we received the Project Officer’s Memorandum that stated IQ Solutions’ response to the Final Revised Proposal was acceptable and recommended award to IQ Solutions.

AR, Tab 21. Source Selection Determination at 3. The SSA’s decision document also stated that “[p]roposed costs have been closely examined by the Contract Specialist, Contracting Officer, as well as the Project Officer, and have been found reasonable and acceptable.” Id. at 6.

In the paragraph of the CO’s statement that follows the CO’s listing of the agency officials she conferred with about this award decision, she sets out her own reasons for recommending award to IQ Solutions--as opposed to the reasons identified in the previous paragraph immediately after the mention of the award recommendation received from the Special Assistant to the SAMHSA Administrator. Here, the CO explains that she “determined that IQ Solutions should receive the award based on technical superiority, reasonable and realistic estimated costs, low cost risk and offers the best overall value to the Government.” CO’s Statement at 4.

The Source Selection Determination to award to IQ Solutions was signed by the CO on June 30. On July 9, the contract was executed by the agency and IQ, with a start date of July 12. Also on July 9, the agency advised URC, by telephone, that the contract had been awarded.

On July 12, HHS provided a letter to all offerors advising that award had been made, and explaining that due to the urgency of the requirement a pre-award notice had not been issued by the agency, as is required under Federal Acquisition Regulation (FAR) § 15.503(a)(2) when an agency awards a small business set-aside contract. AR, Tab 14. That same day, URC requested, by facsimile, an immediate debriefing, and objected to the agency’s failure to provide pre-award notice of its selection decision. AR, Tab 15.

On July 19, URC filed a request for injunctive relief with the U.S. Court of Federal Claims because the agency had not scheduled a debriefing, but was proceeding with

transitioning the contract from URC (and its teaming members) to IQ. During the course of a status conference with the court, also on July 19, a written debriefing was provided to URC by facsimile.

On July 21—2 days after receipt of its debriefing—URC filed a protest challenging award to IQ Solutions with our Office. In response to the protest, HHS initially stopped work on the contract on July 23, but on August 2 provided our Office, and the protester, with a written determination that continued performance in the face of the protest is in the best interests of the United States. AR, Tab 5. On August 4, the court enjoined HHS from proceeding with performance until our Office produced a decision on URC’s bid protest. AR, Tab 4.

### Additional Facts Developed During the Protest

The facts set forth above reflect the record in this case as of the time HHS submitted its agency report on the protest—*i.e.*, on August 25. The following additional information is set forth as an overlay to the recitation above. The information reflected here consists of matters not initially included in the record, but eventually added to it, and consists of matters about which there is no dispute.

As a preliminary matter, the information set forth below is more meaningful when viewed in light of the fact that Part 315 of the HHS Acquisition Regulation (HHSAR), 48 C.F.R. Chap. 3 (2003), anticipates that CO’s should receive evaluation input from agency project officers—*i.e.*, the agency personnel with direct management responsibility for providing the services at issue—in addition to the input received from a technical evaluation panel. For example, with respect to the evaluation of cost or price, the agency’s acquisition regulation anticipates significant involvement by project officers.<sup>3</sup> 48 C.F.R. § 315.305(a)(1). The HHSAR also permits, but does not require, a role for project officers in the review of past performance (§ 315.305(a)(2));

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<sup>3</sup> Specifically, 48 C.F.R. § 315.305(a)(1) advises that

The [CO] should request the project officer to analyze items such as the number of labor hours proposed for various labor categories; the mix of labor hours and categories of labor in relation to the technical requirements of the project; the kinds and quantities of material, equipment, and supplies; types, numbers and hours/days of proposed consultants; logic of proposed subcontracting; analysis of the travel proposed including number of trips, locations, purpose, and travelers; and kinds and quantities of information technology.

and--though ultimately not at issue here--project officers also have a say in the naming of individuals to the technical evaluation panel (§ 315.305(a)(3)(i)).<sup>4</sup>

During the course of this evaluation there was a review of the proposals by the project officers from the NCADI and NMHIC, the two clearinghouses that will be operated under this contract. These project officers reached different conclusions than those reached by the technical evaluation panel. The conclusions of the project officers were memorialized in a 5-page memorandum to the CO, dated on its face June 28, but dated on the signature page June 29. The memorandum was entitled, "Recommendation for award of SAMHSA's Health Information Network contract, 277-04-6091." This memorandum raised detailed concerns about the staffing proposal of IQ, and questioned whether IQ's proposed costs were realistic. The memorandum recommended that the contract be awarded to URC, concluding that the URC proposal offered the best value to the government. AR, Tab 72.

Our Office was not aware of the project officers' memorandum to the CO until September 23, when it was produced in response to a supplemental document request.<sup>5</sup> The appearance of this document led to the filing of a fourth supplemental protest by URC (B-294358.5, filed October 1), and resulted in a decision by our Office to convene a hearing. The purpose of the hearing was to explore the apparent discrepancy in the record between the project officers' memorandum (recommending award to URC), and the statement at page 3 of the Source Selection Determination document (indicating that the CO had received on June 29 a project officer's memorandum recommending award to IQ Solutions). GAO Hearing Letter, Oct. 8, 2004, at 1.

During the hearing, held October 14 at our Office, the CO acknowledged receiving the project officers' memorandum recommending award to URC. Tr. at 17-18, 26, 45, 51-57, 122, 128, 132-33. The CO testified that she misstated the project officers' recommendation in her Source Selection Determination document--i.e., she wrote that the project officers recommended award to IQ, when, in fact, they

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<sup>4</sup> We note also that the HHSAR envisions a role for project officers on the technical evaluation panel (§ 315.305(a)(3)(ii)), but project officers at SAMHSA and the National Institutes of Health are exempted from these requirements when certain conditions exist. 48 C.F.R. § 315.305(a)(3)(ii)(F). During the hearing in this case, the CO testified that this procurement is one where SAMHSA is exempt from the requirements that project officers participate on technical evaluation panels. Tr. at 5-11.

<sup>5</sup> The supplemental document request that ultimately resulted in production of these materials by HHS sought documents generated by any of the individuals identified in the CO's Statement at 4, with whom she conferred about the award decision at the conclusion of the evaluation of final proposals.

recommended award to URC--and that she knew the statement was incorrect when she wrote it. Tr. at 49-50, 53-57, 125.

In addition to acknowledging receipt of the project officers' memorandum, and admitting that she knowingly mischaracterized its recommendation in her Source Selection Determination document, the CO also described, for the first time in the record of this protest, an 8-hour meeting between her and the project officers on the same day that she signed the Source Selection Determination, June 30. Tr. at 18. In essence, she testified that she engaged in a detailed debate with the project officers about their evaluation conclusions, and testified that at the end of the meeting, she had not reached agreement with them, but had reached the point where the project officers showed "resigned acceptance" of her decision to make award to IQ. Tr. at 38. During the hearing, the project officers corroborated the CO's characterization that there was not agreement at the end of the meeting. Tr. at 150, 188.

In addition to the late production of the project officers' memorandum, which triggered the hearing before our Office, there were also additional e-mails produced on September 23, which further corroborate the hearing testimony of both the CO and the project officers. Specifically, the agency produced a June 30 e-mail message to the CO from one of the directors of one of the clearinghouses to be operated by this contract. This Center Director--in SAMHSA parlance--is also the supervisor of one of the project officers. Her e-mail message, prepared at 10:15 p.m. in the evening after the conclusion of the all-day meeting, clearly indicates the continued disagreement of the project team with the intended award to URC. It states that "until the Center Directors have an opportunity to meet with you and have their concerns addressed, the award of this contract must be delayed." AR, Tab 71.

## DISCUSSION

As indicated at the outset of this decision, URC challenges nearly every conclusion reached by HHS about these proposals under the technical evaluation factor and its subfactors, under the past performance evaluation factor, and in the agency's review of cost realism. In addition, URC argues in its fourth supplemental protest filing that the agency's selection decision lacks a rational basis because the selection decision document does not accurately represent the input of the project officers, and does not resolve the areas of dispute between the project officers and the evaluation panel.

While we could, at this juncture, set forth each of the evaluation challenges raised by URC, we do not think such a recitation is needed to resolve this protest. In our view, most of these issues are simply not ready for resolution by our Office--and they are not ready for resolution as a direct result of the CO's inappropriate actions during the final days prior to award of this contract. Our basis for this conclusion follows.

As set forth above, there is no dispute that the CO here knowingly mischaracterized the award recommendation of the project officers--found in their June 29 memorandum to the CO--in the Source Selection Determination document. In addition, there is no dispute that the CO and project officers discussed and debated the elements of this recommendation at length on the same day, June 30, that the CO executed the Source Selection Determination. Finally, there is no dispute that the project officers never produced a different recommendation, nor did they change their minds about their recommendation. Tr. at 153-54, 188-89; see also Tr. at 53-54.

In lieu of additional filings, our Office convened a conference call shortly before the statutory deadline applicable to the initial protest filing in this case in order to obtain the agency's position on the issues raised by URC's fourth supplemental protest, and in light of the undisputed testimony provided at the hearing. HHS argues that there is no requirement in its regulations that an HHS CO document disagreement with agency project officers in the Source Selection Determination. In addition--while expressing concern about the CO's knowing misrepresentation of the project officer's views in the award document--HHS argues that URC was not prejudiced by the CO's actions since the Source Selection Determination provides a reasonable basis for her award decision.

We disagree.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6; AIU North America, Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 7; Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 5. An agency which fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Johnson Controls World Servs., Inc., supra.

FAR § 15.308 requires documentation of source selection decisions, and recognizes that while the selection official may rely on reports and analyses prepared by others, the ultimate decision reflects the selection official's independent judgment. The independence granted selection officials, however, does not equate to a grant of authority to ignore, without explanation, those who advise them on selection decisions. See, e.g., DynCorp Int'l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 6-7 (protest sustained where selection official failed to document the basis for rejecting the evaluation panel's conclusion that it was not possible to determine whether the proposal included all required costs); AIU North America, Inc., supra, at 8-9 (protest sustained, in part, because selection official did not document the basis for concluding that proposals were technically equal, after the evaluation panel concluded that one proposal was superior to the other).

In response to the agency's arguments about the requirements in its regulations, we recognize that there is no express requirement in the HHSAR for selection officials to document their reasons for rejecting the evaluation input received from project officers. On the other hand, our review of the HHSAR requirements reveals that the agency has anticipated the possibility that project officers will provide significant input, especially in the area of evaluated costs. See 48 C.F.R. § 315.305(a)(1). While the permissive language of the regulation does not require this input in every procurement, there is no dispute that it was received here, it was detailed, and it was mischaracterized by the CO in the Source Selection Determination document.

In addition, while the mischaracterization of the project officers' award recommendation is the most significant and clear misstatement in the Source Selection Determination document, it is not the only one. Page 6 of that document states that "[p]roposed costs have been closely examined by the Contract Specialist, Contracting Officer, as well as the Project Officer, and have been found reasonable and acceptable." In contrast, the Memorandum from the Project Officers, at page 5, argues that IQ's proposed costs may not be reasonable. Moreover, there is evidence that the CO's mischaracterizations continued into agency filings prepared for our bid protest process.<sup>6</sup>

Given that HHS has elected to supplement the FAR with a process for receiving input from agency project officers, and given the detailed nature of the input provided in this procurement and the importance all participants attached to it,<sup>7</sup> we think the CO

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<sup>6</sup> For example, as set forth above, the CO's Statement, filed with the initial agency report in this protest, advised that one of the Special Assistants to the Administrator provided "the award recommendation . . . to award to IQ solutions." CO's Statement at 4. Immediately after that sentence, the CO's statement advised that the recommendation "was based upon technical superiority and lower cost, as well as the appropriateness and reasonableness of costs proposed and overall best value to the Government." Id. In fact, the award "recommendation" described by the CO was a brief e-mail message that stated, in its entirety:

Please proceed to award the SHIN [SAMHSA Health Information Network] contract to IQ Solutions. Thank you. Please let me know if you need anything else from me about this matter.

AR, Tab 19. In the next paragraph, the CO provided her basis for concluding that award should be made to IQ. Id. The content and structure of the CO's Statement--together with the fact that none of the misstatements in the underlying documents were revealed or explained--leads us to conclude that the CO was continuing her effort to avoid disclosing the project officers' views.

<sup>7</sup> We think convening what the CO described as an 8-hour meeting to discuss the issues raised by the project officers' memorandum--on the same day that she

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here was required to document the existence of these different views, and state her rational basis for either accepting or rejecting those views. Even leaving aside a Source Selection Determination document that misstates the input of agency officials with a prescribed role in reviewing proposals, there is still no statement in the record from the CO regarding her rationale for rejecting the input of the project officers. Without such a statement, the areas where the project officers disagree with the technical evaluation panel have been elevated to our Office for review, without having been first resolved by the agency.

We turn next to HHS's argument that URC has not been prejudiced by the CO's actions here. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 103 F.3d 1577, 1581 (Fed. Cir. 1996). Here, we recognize that the CO could again choose to reject the recommendation, and the underlying conclusions, of the project officers who provided input based on their review of the proposals, but we do not yet know the basis for any such decision, and we have no reason to conclude in advance that the basis provided will be reasonable. Given that the project officers have provided a detailed memorandum in support of their view that URC's proposal, not IQ's, represents the best value to the government, we think the effect of failing to disclose the recommendation--and failing to provide any contemporary basis for rejecting it--is more than adequate to establish the prejudice needed to prevail in a protest. See Johnson Controls World Servs., Inc., *supra*, at 12.

As a final matter, we feel compelled to comment on the effect of the CO's actions in this case beyond the impact on the adequacy of the selection decision. Though this decision is based on the effect of the CO's actions on the award determination--and not on the effect of those actions on the integrity of the bid protest process--there is no disputing that our review was rendered considerably less efficient than it would have been, had these matters come to light sooner, rather than later. The agency's failure to produce all relevant documents and to provide a timely factual explanation of the events in this procurement, as required by 4 C.F.R. § 21.3(d) (2004), has impeded the operation of our bid protest process.

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executed the Source Selection Determination document--indicates the importance of their input to her. In addition, the CO testified that it was unusual to receive such a detailed memorandum reflecting the views of the project officers, and it was unusual for it to be transmitted, as it was, by a Center Director. Tr. at 45-46.

## RECOMMENDATION

We recommend that HHS prepare a new source selection decision that corrects the misstatements in the current decision document regarding the input of agency project officers. To the extent that the agency's project officers continue to disagree with the views of the technical evaluation panel, we recommend that the new source selection decision contain a sufficient basis for the decision to either accept or reject the views of the project officers, or the views of the technical evaluation panel.

In addition, we think the effect of the CO's actions on this procurement weigh against her continued involvement in this matter.<sup>8</sup> Therefore, we recommend that HHS use a different selection official to prepare the new selection decision. If the new source selection decision determines that an offeror other than IQ offers the best value to the government, HHS should terminate IQ's contract for the convenience of the government and make award to the successful offeror.

We also recommend that URC be reimbursed the costs of filing and pursuing the protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). URC should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa  
General Counsel

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<sup>8</sup> While the CO's motives for mischaracterizing the recommendation of the project officers in her decision document are not dispositive here, we recognize that the CO may initially have been motivated by a reasonable desire to facilitate a prompt award in this procurement. Nonetheless, her actions in failing to disclose the project officers' views--both in her contemporaneous decision document, and in the agency filings submitted during this protest--and her involvement in limiting the record initially produced in this protest, suggest that it would be appropriate to identify a different agency official to make this decision.